OCT 31 2007

NOT FOR PUBLICATION

Debtor.

Appellant,

Appellee.

HAROLD S. MARENUS, CLERK U.S. BKCY. APP. PANEL OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

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In re:

Trustee,

HOUSHANG DARDASHTI,

HOUSHANG DARDASHTI,

JEFFREY I. GOLDEN, Chapter 7

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BAP No. CC-07-1066-TPaMk LA 99-36522-BR Bk. No. Adv. No. LA 06-01823-BR

MEMORANDUM¹

Argued and Submitted on September 21, 2007 at Pasadena, California

Filed - October 31, 2007

Appeal from the United States Bankruptcy Court for the Central District of California

Honorable Barry Russell, Bankruptcy Judge, Presiding

Before: TCHAIKOVSKY, 2 PAPPAS and MARKELL, Bankruptcy Judges.

This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1) it has no precedential value. See 9th Cir. BAP Rule 8013-1.

Hon. Leslie J. Tchaikovsky, U.S. Bankruptcy Judge for the Northern District of California, sitting by designation.

Houshang Dardashti (the "Debtor") appeals the bankruptcy court's order granting the motion of the chapter 7 trustee (the "Trustee") to dismiss the Debtor's complaint for declaratory relief (the "Complaint"). The Complaint seeks a declaration that the Debtor's interest in real property (the "Real Property") is not property of his bankruptcy estate. Prior to the commencement of the Debtor's adversary proceeding, the Trustee had obtained a turnover order (the "Turnover Order"), on a default basis, with respect to the Debtor's interest in the Real Property.

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The Trustee moved to dismiss the Complaint on the alternate grounds that: (1) the Complaint was legally precluded by the Turnover Order and (2) in any event, the Real Property was property of the bankruptcy estate because the Debtor acquired it by devise within 180 days after the filing of his bankruptcy petition. The bankruptcy court granted the Trustee's motion to dismiss on both grounds.

On appeal, the Debtor contends that the Complaint was not precluded by the Turnover Order. He also contends that, under Israeli law, he did not acquire his interest in the Real Property until the probate estate was approved for distribution, which occurred more than 180 days after he filed his bankruptcy petition.

We conclude that the Turnover Order did not bar litigation of the issue as to whether the Debtor's interest in the Real Property was property of his bankruptcy estate, either as a matter of issue or claim preclusion. Therefore, the bankruptcy court's granting of the motion to dismiss on this ground was in error. However, we conclude that the bankruptcy court's ruling that the Debtor's interest in the Real Property was property of his bankruptcy estate as a matter of law was correct. Therefore, the dismissal of the Complaint with prejudice was proper and should be AFFIRMED.

I. FACTS

A. The Debtor's Bankruptcy Filing

The Debtor filed a chapter 7 bankruptcy petition in the Central District of California on July 15, 1999, and shortly thereafter, the Trustee was appointed as trustee of his bankruptcy estate. On October 25, 1999, the Debtor was granted a discharge, and the case was closed as a "no-asset" case on November 2, 1999.

B. The Testator's Death

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The Debtor's father, Loghman Dardashti (the "Testator"), died on November 14, 1999, 122 days after the Debtor filed for bankruptcy. The Testator's will, which was dated February 23, 1996 (the "Will"), gave the Debtor an interest in the Testator's estate (the "Interest"). The Will devised to the Debtor a 40% interest in real property located in Ra'anana, Israel and a 20% interest in real property in Natanya, Israel (collectively, the Real Property). The Debtor did not move to reopen his bankruptcy case to supplement or amend his schedules to reflect the Interest. The Will was probated in the Family Court of Israel. The Testator's estate was approved for distribution on April 13, 2000.

C. The Trustee's Turnover Motion

Learning of the circumstances surrounding the Debtor's acquisition of the Interest, the Trustee moved to reopen the Debtor's bankruptcy case. The motion was granted, and the Trustee was reappointed on September 28, 2005. On November 10, 2005, the Trustee filed a motion requesting that the Debtor's Interest in

the Real Property be turned over pursuant to § 521(a)(3) and (4)³ (the "Turnover Motion"). The Trustee asserted that, because the Testator died within 180 days of the date that the Debtor filed his bankruptcy petition, the Interest was property of the estate. The Debtor did not file an opposition to the Turnover Motion.

A hearing on the Turnover Motion was conducted on December 6, 2005. The Debtor did not appear at the hearing. He contends that he did not receive notice of the motion. The bankruptcy court granted the motion, and an order to that effect was entered on December 28, 2005 (the "Turnover Order"). In the Turnover Motion, the Trustee did not request a finding that the Interest was property of the estate, and no finding to that effect was made, either orally on the record at the hearing or in the Turnover Order. The Debtor did not seek reconsideration of the Turnover Order and did not appeal it.

D. The Adversary Proceeding

On November 27, 2006, the Debtor filed an adversary proceeding seeking a declaration that the Interest is not property of his bankruptcy estate pursuant to § 541(a)(5)(A). The Debtor argued that, according to applicable non-bankruptcy law--in this case, Israeli law--the Debtor did not acquire the Interest until the probate order was entered, which occurred more than 180 days after his bankruptcy petition was filed. The Trustee moved to

Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, as enacted and promulgated prior to the effective date of The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23 ("BAPCPA"), because the case from which this appeal arises was filed before its effective date (generally October 17, 2005).

dismiss the Debtor's complaint for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6) (made applicable to bankruptcy proceedings via Rule 7012).

The Trustee argued that the case should be dismissed on two grounds. First, he contended that the litigation of whether the Interest was property of the estate was precluded by the Turnover Order. Second, he contended that, because the Testator died within 180 days of the date that the Debtor filed his bankruptcy petition, the Interest was property of the Debtor's bankruptcy estate as a matter of law pursuant to § 541(a)(5)(A). The bankruptcy court heard oral argument on the Trustee's motion on January 17, 2007.

E. The Bankruptcy Court's Rulings

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The bankruptcy court ruled orally on the record. A copy of the transcript is included in the record on appeal. The court stated that it had previously found that the Interest was property of the estate in connection with granting the Turnover Order. It concluded that this precluded further litigation of the issue. Tr. H'rg. Jan. 17, 2007 at 7. The bankruptcy court also held that the Interest was property of the estate as a matter of federal bankruptcy law, based on the undisputed fact that the Testator died 122 days after the Debtor filed his bankruptcy petition. On February 7, 2007, the bankruptcy court entered an order granting the Trustee's motion to dismiss the Complaint with prejudice. The Debtor filed a timely notice of appeal from the order.

II. ISSUES

1. Whether the Turnover Order, granted on a default basis, precludes litigation in a subsequent adversary proceeding of the

issue of whether the Interest is property of the Debtor's bankruptcy estate, either as a matter of issue or claim preclusion.

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2. Whether the Interest, which was acquired pursuant the Will the result of the death of the Debtor's father less than 180 days after the bankruptcy petition was filed but as to which the probate order authorizing distribution of the Interest was entered more than 180 days after the petition was filed, is property of the Debtor's bankruptcy estate pursuant to \$ 541(a)(5)(A).

III. JURISDICTION

The bankruptcy court had jurisdiction over the adversary proceeding pursuant to 28 U.S.C. \$ 1334 and \$ 157(b)(2)(A). We have jurisdiction over this appeal pursuant to 28 U.S.C. \$ 158(c).

IV. STANDARD OF REVIEW

We review the determination of whether issue or claim preclusion applies "de novo as [it presents] mixed questions of law and fact in which legal questions predominate." George v. City of Morro Bay (In re George), 318 B.R. 729, 732-33 (9th Cir. BAP 2004), aff'd, 144 Fed. Appx. 636 (9th Cir. 2005), cert. denied, 546 U.S. 1094 (2006).

Where the underlying facts are undisputed, we also review de novo the determination of whether property is included in a bankruptcy estate. Cisneros v. Kim (In re Kim), 257 B.R. 680, 684 (9th Cir. BAP 2000), aff'd, 35 Fed. Appx. 592 (9th Cir. 2002).

We review the bankruptcy court's decision to dismiss a claim pursuant to FRCP 12(b)(6) de novo. <u>Busseto Foods, Inc. v. Laizure</u> (<u>In re Laizure</u>), 349 B.R. 604, 606 (9th Cir. BAP 2006).

V. DISCUSSION

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A. The Turnover Order Does Not Bar the Determination of Whether the Interest is Property of the Debtor's Bankruptcy Estate.

The Debtor argued below that the issue raised by the Complaint was not precluded by the Turnover Order under principles of res judicata. The bankruptcy court disagreed. It found that "[the turnover order] is a proper and valid order. . . . So it is clear that [the turnover order] is res judicata." Tr. H'rg. Jan. 17, 2007 at 7. On appeal, the Debtor contends that this ground for the bankruptcy court's dismissal of the Complaint was in error. We agree.

Under contemporary usage, "res judicata" describes the preclusive effect of a prior adjudication that includes both claim preclusion and issue preclusion. See Migra v. Warren City Sch.

Dist. Bd. of Educ., 465 U.S. 75, 77 n.1 (1984); Robi v. Five

Platters, Inc., 838 F.2d 318, 321 (9th Cir. 1988). The burden to show the elements of preclusion is on the party asserting preclusion. Khaligh v. Hadaegh (In re Khaligh), 338 B.R. 817, 825 (9th Cir. BAP 2006).

The Debtor argues that claim preclusion does not bar litigation of the issue of whether the Interest is property of his bankruptcy estate because, absent waiver of the right to have the issue determined in the context of an adversary proceeding, the issue could not have been determined pursuant to the Turnover Motion. He contends that he did not waive this right. The Debtor also argues that issue preclusion does not bar litigation of the issue of whether the Interest is property of his bankruptcy estate because the issue was not actually litigated in connection

with the Turnover Motion. We address both of these contentions below.

1. <u>Claim preclusion does not bar litigation of the issue of whether the Interest is property of the estate.</u>

(Second) of Judgments § 17.

28 § 542(a).

Claim preclusion stands for the principle that a final judgment is the full extent of relief afforded between the same parties on the same claim. Robi, 838 F.2d at 321-22. Claim preclusion prevents the subsequent litigation of all claims or defenses that could have been raised in the prior proceeding, regardless of whether they were actually raised. Id. at 322; In

re Cogliano, 355 B.R. 792, 804 (9th Cir. BAP 2006); Restatement

Subject to exceptions not applicable here, pursuant to § 542, the chapter 7 trustee may only seek turnover of property of the estate.⁴ A proper basis for opposing such a motion is that the property in question is not property of the bankruptcy estate.

See Cogliano, 355 B.R. at 304-05. The Debtor here did not respond to the Turnover Motion and thus did not raise this basis for opposing it.

The Turnover Order was a final order in a contested matter and functionally a judgment for preclusion purposes. <u>See</u> Rules

The text of § 542(a) states: Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

9014 & 7054. Therefore, at first blush, it would appear that the issue raised by the Complaint should be barred as a matter of claim preclusion. However, this Panel previously identified an exception to the rule that is applicable here.

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In Cogliano, we held that the Restatement (Second) of Judgments § 26(1)(c) provides a limitation on the availability of claim preclusion as to the estate's interest in property where the previous proceeding was not an adversary proceeding. 5 Cogliano, 355 B.R. at 804-05. We found that the bankruptcy court lacked authority to decide whether the Debtor's interest in an IRA was property of the estate in a turnover motion because Rule 7001(2) requires an adversary proceeding for such a determination. Id.; see also Johnson v. TRE Holdings, LLC (In re Johnson), 346 B.R. 190, 195-96 (9th Cir. BAP 2006) (holding that the bankruptcy court lacks authority in deciding a relief from stay motion -- a contested matter--to enter an order determining interests in property). went on to state that, because the bankruptcy court lacked authority to determine the estate's interest in the IRA in the context of an objection to the debtor's claim of exemption in the

Section 26(1) (c) of the Restatement states: When any of the following circumstances exists, the general rule of \$ 24 does not apply to extinguish the claim, and part or all of the claim subsists as a possible basis for a second action by the plaintiff against the defendant:

⁽c) The plaintiff was unable to rely on a certain theory of the case or to seek a certain remedy or form of relief in the first action because of the limitations on the subject matter jurisdiction of the courts or restrictions on their authority to entertain multiple theories or demands for multiple remedies or forms of relief in a single action, and the plaintiff desires in the second action to rely on the theory or to seek that remedy or form of relief.

Restatement (Second) of Judgments § 26(1)(c).

interest or the trustee's turnover motion, the issue could not have been raised in those contested matters absent waiver of the requirement or harmless error. <u>Cogliano</u>, 355 B.R. at 805. Finding no such waiver or harmless error, we held that there was no claim preclusion.

For the same reasons as in <u>Cogliano</u>, we find no basis for claim preclusion in the instant case. The record does not reflect that the Debtor waived the requirement of an adversary proceeding to determine whether the Interest was property of his bankruptcy estate. Thus, because the bankruptcy court lacked authority to determine the issue in the context of a contested matter—i.e., the Turnover Motion, claim preclusion does not apply.

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2. <u>Issue preclusion does not bar litigation of whether the</u> Interest is property of the bankruptcy estate.

Issue preclusion prevents the relitigation of all issues of fact or law that were actually litigated and actually and necessarily decided in a prior proceeding after a full and fair opportunity for litigation. Robi, 838 F.2d at 322; Restatement (Second) of Judgments § 27. Issue preclusion (collateral estoppel) applies when the following elements are met: (1) there was a full and fair opportunity to litigate the issue in the previous action; (2) the issue was actually litigated in that action; (3) the issue was lost as a result of a final judgment in that action; and (4) the person against whom collateral estoppel is asserted in the present action was a party or in privity with a party in the previous action. In re Palmer, 207 F.3d 566, 568 (9th Cir. 2000). Here, the critical element is the second one: that is, was the issue of whether the Interest was property of the Debtor's bankruptcy estate actually litigated in the Turnover Motion? We conclude that, because the Turnover Order was entered on a default basis, the issue was not actually litigated.

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"'In the case of a judgment entered by confession, consent, or default, none of the issues is actually litigated. Therefore, the rule of this Section [describing issue preclusion] does not apply with respect to any issue in a subsequent action." Arizona v. California, 530 U.S. 392, 414 (2000) (alteration in original) (citing Restatement (Second) of Judgments § 27, cmt. e (1982)). A default judgment is generally not entitled to issue preclusive effect unless the litigant otherwise actively participated in the case or engaged in obstructive tactics to impede the usual process of adjudication. Palmer, 207 F.3d at 568; see also In re Daily, 47 F.3d 365, 368 (9th Cir. 1995) (giving preclusive effect to a default judgment where debtor substantially participated in the adversary process prior to the default judgment); In re Gottheiner, 703 F.2d 1136 (9th Cir. 1983) (finding that sixteen month's participation in a lawsuit was sufficient to give the debtor his day in court and to give the default judgment preclusive effect).

The Ninth Circuit's holding in <u>Palmer</u> is determinative of this issue. There, the debtors had previously petitioned the United States Tax Court for a redetermination of their tax liability. The Service responded with affirmative allegations that the debtor's tax deficiency was in part attributable to fraud. <u>Palmer</u>, 207 F.3d at 567. The debtors took no further part in the litigation. The Tax Court ultimately granted summary judgment in favor of the Service. It specifically found that the

debtors' tax deficiency was attributable to fraud. Id.

issue.

The debtors subsequently filed a voluntary bankruptcy petition and filed a complaint to determine the dischargeability of the tax liability in question. Id. The bankruptcy court concluded that the issue of fraud was precluded from redetermination by collateral estoppel (issue preclusion). See id. On appeal, the Ninth Circuit reversed. It found that the debtors had "give[n] up at the outset" after filing the redetermination petition. It held that, under these circumstances, the fraud issue was not actually litigated and could not preclude litigation of the issue in the debtors' subsequent bankruptcy proceeding. Id. at 568.

Palmer clearly dictates the outcome in the present matter. Nothing in the record before us indicates that the issue of whether the Interest is property of the Debtor's bankruptcy estate was "actually litigated" by the Debtor when the court granted the Turnover Order on a default basis. Whether or not the Debtor failed to receive actual notice of the Turnover Motion, as he contends, it is clear that the Debtor, like the debtors in Palmer, did not actively participate in the prior proceeding.

The Trustee has not presented any facts to suggest that the Debtor otherwise meaningfully participated in the Turnover Motion

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The Trustee cites a pre-Code case for the proposition that the underlying validity of a turnover order cannot be collaterally attacked in a contempt proceeding. See Clements v. Coppin, 72 F.2d 796, 797-98 (9th Cir. 1934). The Trustee's argument is unpersuasive. Clements was decided without the benefit of the modern Code and Rules. Moreover, to the extent Clements is inconsistent with the Ninth Circuit's subsequent decision in Palmer, we follow Palmer as the most recent authority on the

or that he engaged in obstructionist tactics so as to render him vulnerable to issue preclusion "without completion of the usual process of adjudication." <u>See Daily</u>, 47 F.3d at 368. Thus, regardless of whether the bankruptcy court "actually found" that the Interest was property of the estate in connection with the Turnover Motion, the Trustee has not satisfied the second element as required for the application of issue preclusion. We therefore conclude that issue preclusion does not bar the redetermination of this issue.⁷

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B. The Interest is Property of the Bankruptcy Estate as a Matter of Law.

All legal and equitable interests of the debtor in property—wherever located and by whomever held—at the commencement of the case are property of the estate. § 541(a)(1). Any interest that the debtor "acquires or becomes entitled to acquire" by bequest, devise or inheritance within 180 days after the filing of the debtor's bankruptcy petition is property of the estate if the

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For the same reason, the law of the case doctrine did not compel the bankruptcy court to determine that the Interest was property of the Debtor's bankruptcy estate. This doctrine is similar to issue preclusion except that it operates to discourage (rather than to preclude) redetermination of an issue previously determined in the same case rather than a subsequent one. re Wiersma, 483 F.3d 933, 941 (9th Cir. 2007). It is questionable whether the adversary proceeding commenced by the filing of the Complaint is properly viewed as the same case as the contested matter commenced by the filing of the Turnover Motion. important, like issue preclusion, the law of the case doctrine applies only when the issue was previously actually determined. See Cady v. Klapperman (In re Cady), 266 B.R. 172, 184 (9th Cir. BAP 2001). The record does not reflect that the issue of whether the Interest was property of the Debtor's bankruptcy estate was actually determined pursuant to the Turnover Motion. First applying the doctrine of the law of the case under these circumstances would vitiate the requirement of Rule 7001(2) that the validity and extent of an interest in property be determined pursuant to an adversary proceeding.

interest would have been property of the estate if the interest was an interest of the debtor on the date the petition was filed. \$541(a)(5)(A).

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The existence and extent of a debtor's legal or equitable interest is determined under applicable nonbankruptcy law. Whether that interest would be property of the estate if held by the debtor at the time of filing the bankruptcy case is a matter of federal bankruptcy law. See <u>In re Pettit</u>, 217 F.3d 1072, 1078 (9th Cir. 2000) (citing Butner v. United States, 440 U.S. 48, 54-55 (1979)). Thus, the critical inquiry is whether the Debtor "acquired or became entitled to acquire" any legal or equitable interest in the Testator's estate within 180 days of commencement of the Debtor's bankruptcy case. We conclude that the Debtor acquired at least an equitable interest in the Testator's estate at the time of the Testator's death. That interest then automatically became a part of the Debtor's bankruptcy estate as a matter of federal bankruptcy law.

The Testator's will, devising the Interest, was probated in Israel. Therefore, whether the Debtor acquired or became entitled to acquire a legal or equitable interest in the Testator's estate is determined by Israeli law. See Restatement (Second), Conflict of Laws § 239 ("(1) Whether a will transfers an interest in land and the nature of the interest transferred are determined by the law that would be applied by the courts of the situs. (2) These courts would usually apply their own local law in determining such questions"); Inheritance Law, 5725-1965 § 138 (Isr.), translated in Aryeh Greenfield, Inheritance Law and Regulations 38 (3d ed. 2001) ("The Law of the place where assets are located shall apply

to assets, that are inherited only according to that Law.").8

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The determination of foreign law is a question of law. In making such a determination, a trial court may consider any relevant source, regardless of admissibility, and whether or not submitted by a party. Fed. R. Civ. P. 44.1 (made applicable in bankruptcy by Rule 9017). Appellate courts review questions of foreign law de novo. Richmark Corp. v. Timber Falling

Consultants, 959 F.2d 1468, 1473 (9th Cir. 1992). Therefore, an appellate court may also consider any relevant source to determine foreign law. See 9 Charles Alan Wright & Arthur R. Miller,

Federal Practice and Procedure § 2446 (2d ed. 1994). Thus, despite the absence of findings by the trial court as to Israeli law, and only cursory briefing by the parties on appeal, we properly look to Israeli inheritance law in order to determine the nature and extent, if any, of the Debtor's rights to the Interest at the time of the Testator's death.

Under Israeli inheritance law, upon a person's death, the decedent's estate passes to his heirs. Inheritance Law, 5725-1965 § 1 (Isr.), translated in Aryeh Greenfield, Inheritance Law and Regulations 5 (3d ed. 2001). Generally, no rights under a will can be claimed until the probate order is entered. See id. §§ 39 and 66. However, the heir has the right to renounce any portion of the estate after the testator's death and prior to the distribution of the estate. Id. § 6(a). The heir also has the right to transfer or charge any portion of his part of the estate

⁸ All of the citations to Israeli inheritance law are to an English translation of the Hebrew text and are current through the time of the Testator's death. See Aryeh Greenfield, Inheritance Law and Regulations 3 (3d ed. 2001).

after the testator's death and prior to distribution of the estate. <u>Id.</u> § 7(a). Furthermore, creditors of the heir may attach the heir's part of the estate. <u>Id.</u> The Debtor obtained these rights as to the Interest under Israeli inheritance law as of the Testator's death, 122 days after the Debtor commenced his bankruptcy case.

Moreover, in a case not involving foreign law, we previously found an interest in a probate estate to be property of the bankruptcy estate based on the date of the testator's death. See Chappel v. Proctor (In re Chappel), 189 B.R. 489, 492 (9th Cir. BAP 1995); see also H.R. Rep. No. 95-595, at 367-68 (1977), reprinted in 1977 U.S.C.C.A.N. 5963, 6323-24 (stating that the concept of property of the estate is to be interpreted broadly). Therefore, because the Debtor acquired rights in the Interest as of the Testator's death within 180 days of the filing of his bankruptcy petition, which rights he could renounce, transfer, and encumber and which rights creditors could reach, these rights were property of his bankruptcy estate under § 541(a) (5) (A).

In considering whether to sustain a motion to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6), we must take as true all allegations of material fact and construe them in the light most favorable to the nonmoving party. The trial court should dismiss the complaint only if it appears certain that there are no facts which the plaintiff could prove that would entitle him to relief. Laizure, 349 B.R. at 606.

There are no facts here in dispute. The Testator died 122 days after the Debtor filed his bankruptcy petition. For the reasons stated above, the Interest became property of the Debtor's

bankruptcy estate as a matter of law. There are no facts which the Debtor could present that would entitle him to the relief requested. Therefore, the Complaint was properly dismissed pursuant to Fed. R. Civ. P. 12(b)(6), and the bankruptcy court's order dismissing the Complaint with prejudice was correct.⁹

VI. CONCLUSION

The issue raised by the Complaint is not barred by either claim preclusion or issue preclusion. Therefore, the bankruptcy court's conclusion that litigation of the issue of whether the Interest is property of the Debtor's bankruptcy estate was barred by the Turnover Order is in error. However, because we find the Interest to be property of the Debtor's bankruptcy estate as a matter of law, the bankruptcy court correctly granted the motion to dismiss the Complaint with prejudice pursuant to Fed. R. Civ. P. 12(b)(6). The order dismissing the Complaint for failure to state a claim upon which relief may be granted is AFFIRMED.

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The Trustee contends that we need not address whether the Interest is property of the Debtor's bankruptcy estate because the Debtor did not raise it in his opposition to the Trustee's motion to dismiss the Complaint or in his appellate brief. However, on appeal, we may consider any issue supported by the record that was raised sufficiently for the trial court to rule on. See In re E.R. Fegert, Inc., 887 F.2d 955 (9th Cir. 1989). The Debtor raised the issue in the Complaint and addressed the bankruptcy court's questions on the issue at the hearing on the Trustee's motion to dismiss. The facts are undisputed, and the issue in question is a pure question of law. Accordingly, we find the record sufficient to permit us to consider the issue.